No 1225-ASOIII-Lab-69/4976.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Kalkaji Compressor Works Prop. M/s K.G. Kholsla and Co. (P) Ltd., Village Aurangpur, district Gurgaon :-

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No 28 of 1968

between

Shri H.L. Verman workman and the management of M/s Kalkaji Compressor Works Prop. M/s K.G. Khosla and Co. (P) Ltd., village Aurangpur, district Gurgaon.

Present.—Shri H.L. Verman applicant in person.
Dr. Anand Parkash, for the management.

AWARD

Shri H. L. Verman was in the service of M/s Kalkaji Compressor Works, 11/6 Milestone, Delhi-Mathura Road, Faridabad as a Planning Assistant. He remained ill for a long time and according to the management was not medically fit to resume duty. His services were accordingly terminated. This gave rise to an industrial dispute and the President of India in exercise of the powers conferred by clause(c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/FD/279B/6533 dated the 11th March, 1968.

Whether the termination of the services of Shri H. L. Verman was justified and in order? If not, to what relief is he entitled?

On receipt of the reference, usual notices were issued to the parties in response to which the workman filed his statement of claim and the management filed their written statement. The case of the workman is that he joined the respondent factory on the 1st July, 1961, he fell ill with diabetic Malthis Gangarin of left foot on the 27th November, 1965, and was examined by E. S. I. Doctors on December 11, 1965 and was recommended leave for one week and then he was referred to the Badshah Khan Hospital, Faridabad for admission as an indoor patient. It is alleged that this Hospital was not convenient to the workman because he resided in Sarai Rohilla, Delhi and so he got admitted himself in the Hindu Rao Hospital, Delhi, as an indoor patient on the 13th December, 1965 and he remained there till the 10th August, 1966. He was discharged from the hospital on the 10th August, 1966 and he reported for duty at the respondent factory on the 16th August, 1966. He was referred to the Factory's Doctor who examined him on the 17th August, 1966 and recommended him a further rest for one month. The workman felt that he was fit for duty but the Factory's Doctor was standing in the way of his resuming duty, so he approached the Authorities of the Hindu Rao Hospital Delhi and obtained a certificate of fitness on the same day and again reported for duty on the 16th November, 1966 but the Factory's Doctor again recommended him rest for two months, i.e., upto the 15th January, 1967, then one month rest upto the 16th February, 1967, further rest upto the 28th February, 1967 and again one month rest upto the 1st April, 1967. The workman again approached the Hindu Rao Hospital Authorities who also recommended leave for one month on the 1st April, 1967. This means that the workman should have remained on leave upto 30th April, 1967 but the respondent management terminated his services on 18th April, 1967. It is alleged that the termination of his services was not in order because the standing orders of the respondent Company under which the services of the workman have been terminated were not applicable to him because the standing orders were framed in 1962 whereas the workman was appointed in 1961 and no notice under section 91 of the Industrial Disputes Act regarding the change in the conditions of services was given to him. It is alleged that section 33(1) of the Employees State Insurance Corporation Act debar the management from terminating his services so long he was in receipt of sickness benefit from the E. S. I. Authorities.

The management in their written statement have taken up a preliminary objection that there is only an individual dispute between Shri H. L. Verman and the management of M/s Kalkaji Compressor Works and there is no collective dispute. Section 2A of the Industrial Disputes Act is said to be constitutionally invalid because it is in violation of article 14 and 19 of the Constitution and is beyond the legislative competence of Parliament as contemplated by Entry 22 of List III of Schedule 7 of the Constitution of India. It is pleaded that the services of the workman had been terminated in accordance with the provisions of standing orders because he was unfit for duty. The pleadings of the parties gave rise to the following issues.—

1. Whether the reference is invalid for the reasons mentioned in the preliminary objections?

2. Whether the standing orders of the Company are not applicable to the applicant because he joined the services in 1961 and the standing orders were framed some times in 1962 and it was incumbent upon the management to give a notice to the claimant under section 9A of the Industrial Disputes Act, 1947, for making the standing orders applicable to him ?

3. Whether the services of the claimant could not be terminated in accordance with the provisions of clause (6) of the standing orders because they are in contravention of the provisions of the E. S. I. and the Industrial Disputes Act, 1947?

4. Whether the termination of the services of Shri H. L. Verman was justified and in order? If not, to what relief is he entitled?

The parties have produced evidence in support of their respective contentions. I have heard the learned representatives of the parties and have gone through the record. My findings are as under:—

Issue No. 1.—It is submitted on behalf of the management that the dispute raised by the claimant Shri H.L. Verman is purely an individual dispute and there is no collective dispute between the workmen and the management. It is submitted that an individual dispute cannot be adjudicated upon in proceeding under the Industrial Disputes Act, 1947, and section 2A of the said Act under which the present reference has been made is in violation of Articles 14 and 19 of the Constitution and is also beyond the legislative competence of Parliament as contemplated by Entry 22 of List III of Schedule VII to the Constitution of India. For all these reasons

the present reference is said to be invalid and *ultra vires* of the powers of the Government and this Court has no jurisdiction to adjudicate upon it.

During the course of argument the learned representative of the management was asked to cite any authority in support of the proposition that an objection regarding the vires of an Act of a Legislature could be raised in this court which is a Court of special jurisdiction. The learned representative for the management frankly conceded that there was no authority to support this proposition. In my opinion the vires of an Act cannot be questioned in this Court and I, therefore, find this issue in favour of the workman.

Issue Nos. 2 *to* 4.—These issues can be conveniently discussed together because the main question for consideration is whether the termination of the services of the claimant was justified and in order. The management have sought to justify their action on the ground that the claimant was unable to perform his duty because he was suffering from Diabetic Malthis C Gangarin of left foot and he has been on leave since 23rd November, 1965 on this account and there was no certainity as to when he would be able to resume his duty and the management could not indefinaitely go on waiting for him. They have sought to justify their order, dated 18th April, 1967 terminating the service of the claimants under rule 6(2) of their certified Standing Orders which is as under :—

> Should, however, the sickness or disease be considered such as is not likely to render him fit for normal work within two months, a workman's service is liable to be terminated after the expiry of two months.

The stand taken up by the claimant in this Court is not consistent. The claimant admits that he fell ill on account of Diabetic Malthis C Gangarin of left foot on 27th November, 1965 and as he was covered under the E.S.I. Scheme, he was recommended leave for one week with effect from 11th December, 1965 and was referred to Badshah Khan Hospital for admission as an indoor patient. The claimant says that he was residing in Sarai Rohilla, Delhi and it was not convenient for him to stay in Badshah Khan, Hospital. Therefore, he approached the authorities of Hindu Rao Hospital and was admitted there as an indoor patient on 13th December, 1965 and remained there till 10th August, 1966. The claimant states that he was discharged from the hospital on 10th August, 1966 as he was considered fit to resume his duty and he actually resumed his duty in the respondent concern on 16th August, 1966 but the management referred him to their part-time Doctor who without examining him recommended him rest for one month more. It is alleged that the Factory's Doctor was standing in the way of his resuming the duty and so the claimant was left with no alternative but to approach the authorities of the Hindu Rao Hospital again and Doctor-Incharge of the Hospital declared him fit and issued him a fitness certificate and the claimant again reported for duty on 16th December, 1966 but the factory's Doctor again came in the way of the claimant and recommended him rest for two months, i.e., up to 16th February, 1967 and thereafter kept him under observation up to 28th February, 1967 and again recommended rest up to 31st March, 1967 although at no stage the Factory's Doctor examined him. According to the claimant the Factory's Doctor did all this with an ulterior motive because he wanted him to quit the services of the respondent Company as the claimant had formed a union of the workmen on account of which the management was not happy with him. Thus the one stand taken up by the workman is that he was fit for duty from 16th August, 1966 onwards after his discharge from Hindu Rao Hospital and notwithstanding the period of rest advised by the Factory's Doctor, the Doctor Incharge of Hindu Rao Hospital gave him fitness certificate and according to the claimant the factories doctor *mala fide* did not declare the claimant fit for duty because the claimant was taking part in Trade Union Activities.

The other stand which is contrary to the stand taken above is that the claimant was in receipt of the extended sickness benefit under the E.S.I. Scheme from 1st September, 1966 to 6th July, 1967 because under Notification No. INS-II(10)-03/64, dated 27th January, 1967 issued by the Employees State Insurance Corporation, the persons suffering from disease known as Gangarin and its sequelae could also be granted extended sickness benefit on the same scale and subject to the same condition as specified in the resolution adopted by the Corporation at its meeting held on 23rd August, 1960 in regard to the grant of extended sickness benefit to persons suffering from T.B. Leprosy, Mental and Malignant diseases. It is submitted that under the provisions of section 73(1) of the Employees State Insurance Act no employer can dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit. It is submitted that the provisions of Rule 6(2) of the certified standing orders as reproduced above run counter to the provisions of section 83(1) of the Employees State Insurance Act, 1948 and therefore they could not be enforced against him. It is further submitted that the certified standing orders came into force in the year, 1962 whereas the claimant was appointed in 1961 and therefore his appointment was not subject to any such condition as are laid down in clause 6 of the certified standing orders and the management did not give any notice under section 9-A of the Industrial Disputes Act, to the claimant regarding the change in the terms of his employment after the standing orders came into force. The essence of second stand taken up by the claimant is that he was not fit to resume duty at all because he was in receipt of the extended sickness benefi up to July, 1967 and in view of the provisions of section 73(1) of the Employees State Insurance Act, 1948, the—management could not terminate his services till he was in receipt of the sickness benefit notwithstanding the provisions of the certified standing orders.

The contradiction in the two stands taken up by the claimant is that according to the first stand he was fit for duty when he reported on 16th August, 1967 but the Company's Doctor wrongfully did not declare him fit because of his trade union activities and according to the second stand the claimant was not fit for duty till July, 1967 and as he was in receipt of the sickness benefit under the Employees State Insurance Scheme the management could not terminate his services in view of section 73(1) of the said Act. The claimant could not reconcile these contradictory stands. It is not the case of the claimant that after sickness benefit July, 1967, he was declared fit by any Doctor and he reported for duty (notwithstanding the termination of his services on 18th April, 1967 because he could ignore the same being wrongful) and the management refused to give him duty and for this reason he was entitled to his wages from that date onwards. There is no material on the record to show that the claimant was actually fit after July, 1967 and therefore even if it be held that the order, dated 18th April, 1967 of the management terminating the services of the claimant was wrongful as being contrary to the provisions of section 73(1) of the Employees State Insurance Act is not possible to order his reinstatement or to grant him any other benefit because it can not be said that the claimant was fit for duty after the grant of the extended sickness benefit by the Employees State Insurance was stopped. In my opinion the first stand taken up by the claimant must be held to be wrong. No fault can be found with the Doctor of the Company because the claimant himself has been enjoying sickness benefit under the Employees State Insurance Scheme and it cannot be said that he was fit for duty from August, 1966 onwards. As regards the second stand the submission of the claimant that the termination of his services by the management in April, 1967 was not justified is technically correct but the claimant is not entitled to any relief because it cannot be said that he ever became fit to resume duty after the extended sickness benefit which was being given to him was stopped. I give my award accordingly. No order as to cost.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated, the 6th February, 1969.

No. 438, dated 18th February, 1969.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 6th February, 1969.

No.1229-ASOIII-Lab-69/4979.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Bharat Carpets Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT FARIDABAD

REFERENCE No. 30 of 1968

between

SARVSHRIMATI MANJIT KUMARI AND OTHER WORKMEN AND THE MANAGEMENT OF M/S BHARAT CARPETS LTD., FARIDABAD

Present:—

Shri Amar Singh, for the workmen.

Shri D. C. Chadha, for the management.

AWARD

Sarvshrimati Manjit Kumari, Saroj Kumari, Bina Devi, Chambeli Devi and Kasturi Devi were in the service of M/s Bharat Carpets Ltd., Faridabad as a Cone Winders. Their services were terminated and this gave rise to an industrial dispute. The President of India in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/FD/166B, dated 13th March, 1968:—

> Whether the termination of service of Sarvshrimati Manjit Kumari, Saroj Kumari, Bina Devi, Chambeli Devi and Kasturi Devi was justified and in order ? If not, to what relief are they entitled ?

On receipt of the reference, usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. On behalf of the management it is pleaded that the dispute regarding the alleged termination of the services of the claimants has not been sponsored by the workmen of the respondent establishment and therefore it cannot be treated as an industrial dispute under the provisions of the Industrial Disputes Act and therefore the reference is incompetent and this Court has no jurisdiction. It is pleaded that section 2A of the Industrial Disputes Act is *ultra vires* of the Constitution. On merits it is pleaded that the respondent company was incorporated on 10th May, 1965 and one of its main objects is to manufacture carpets and with this end in view the respondent company has been importing a large number of equipements for the installation of plant and machineries for the manufacture of carpets and the management have been carrying on experiments in this connection. It is alleged that the claimants were employed to do Cone Winding work but it was later on found that they were not suitable to the needs and requirements of the process under experiments and they served for small period for few months. It is alleged that each one of them has since settled her accounts and there is no dispute between them and the claimants are not even interested in the present dispute.

The pleadings of the parties gave rise to the following issues :—

1. Whether the objection that section 2A of the Industrial Disputes Act is *ultra vires* can be raised in this Court ?

2. Whether the reference is not competent for the reasons given in para No. 6 of the preliminary objections ?

3. Whether the termination of the services of Sarvshrimati Manjit Kumari, Saroj Kumari, Bina Devi, Chambeli Devi and Kasturi Devi was justified and in order ? If not, to what relief are they entitled ?

In para No. 4 of the claim statement it is pleaded on behalf of the workmen that the management have contravened the provisions of section 33 of the Industrial Disputes Act. The following additional issue was accordingly added:—

> Whether there has been a contravention of the provisions of section 33 of the Industrial Disputes Act, 1947, and if so, what is its effect ?

It is not necessary to decide this case on merits. Shri Amar Singh who represented the claimants made a statement on 29th July, 1968 that Sarvshrimati Manjit Kumari, Saroj Kumari, and Kasturi Devi are not interested in persuing their claim and he has no instructions on their behalf.

As regards Sarvshrimati Bina Devi and Chambeli Devi, the position is that they were appointed on 1st September, 1967 and their services were terminated on 29th October, 1967, on the ground that the respondent factory is yet in a trial stage and the female Cone Winders were not found suitable and that no new Cone

Winders have been appointed after the se vices of the claimants were termin ted. In view of the stand taken up by the management the learned representative of the management has made a statement that the services of the claimants appear to have been retrenched and since there is no post on which they can be reinstated, he does not press their claim for reinstatement for the present. In view of the statement, I hold that the claimants are not entitled to any relief at present. No order as to cost.

The 19th February, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad,

No. 465, dated 20th February, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

Dated, the 19th February, 1969

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 1224-ASOIII-Lab-69/4982.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between workmen and the management of M/s Industrial and Export Corporation, Railway Road, Gurgaon.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 2 of 1969

between

SHRI SURAJ BHAN WORKMEN AND THE MANAGEMENT OF M/S INDUSTRIAL AND EXPORT CORPORATION RAILWAY ROAD, GURGAON

Present :—
Shri C. B. Kaushik, for the workman.
Nemo for the management.

AWARD

Shri Suraj Bhan was in the service of M/s Industrial and Export Corporation, Railway Road, Gurgaon as a Pressman on Rs. 70 P.M. from 14th June, 1963 onwards. His services were terminated on 18th October, 1968. This gave rise to an industrial Dispute and the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. 1D GG 50-A 68/31953, dated 30th December, 1968.

Whether the termination of services of Shri Suraj Bhan, Pressman, was justified and in order? If not, to what relief is he entitled ?

On receipt of the reference, usual notices were issued to the parties. The workman Shri Suraj Bhan was present with Shri C. B. Kaushik, General Secretay of the Engineering Mazdoor Union. No body appeared on behalf of the management. The notice issued under registered cover to the management was received back with the endorsement "refused". Under these circumstances, the service of respondent company was considered sufficient and *ex parte* evidence of the workman was recorded.

The workman has appeared as his own witness in support of his case and has stated that he joined the respondent company as a Pressman at Rs. 70 P.M. on 14th June, 1963 and that he continuously worked till 18th October, 1968. He says that his wages from 1st July, to 15th August were due and when he asked for wages he was turned out and was not allowed to work. He says that no prior notice or any charge-sheet was given to him.

There is no reason to doubt the sworn testimony of the workman. It is thus proved that the termination of his services was not justified and in order. He is entitled to be reinstated with continuity of services and full back wages.

Dated, the 6th February, 1969

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 436, dated 18th February, 1969.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated, the 6th February, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.